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VALIDITY OF CONTRACT OF MEMBERSHIP IN RELIGIOUS ORDER.

The recent case of the *Order of St. Benedict of New Jersey v. Steinhauser,* 179 Fed., 137, is rather interesting, involving as it does the legality of the vow of poverty taken by a member of a religious society as a condition precedent to his admittance to the order. The United States Circuit Court of Minnesota in considering the question decided that the vow is not contrary to public policy, but is valid and binding so long as the member retains his membership in the society.

The decision is unique in that, although adhered to by the United States Supreme Court, as well as by the State Courts, when they have been called upon to decide the merits of a like issue, the question has been but little mooted in the tribunals of this country.

Perhaps the earliest decision bearing on the question is that of *Goesele v. Bimeler,* 14 How. (U. S.) 589. In that case, a number of immigrants from Germany settled in Ohio and formed themselves into the Separatist Society. A plan for the community

of property, involving the vow of poverty, *i.e.*, the relinquishment of all individual rights to the ownership of property, was adopted. One Goesele had been a life long member of the society and at his death was in good standing in the order. After his decease, his heirs instituted proceedings against the society, joining Bimeler, a prime mover in the organization, as co-defendant. The complainants sought a division of the society's effects and an assignment to them of the property contributed by the deceased.

In a decision written by Justice McLean, the United States Supreme Court had slight hesitancy in denying the plaintiff a right of action, thus establishing the validity of such a vow.

The case of the *Order of St. Benedict v. Steinhauser* extends the doctrine slightly, for it also holds that property held by a member, who died in full fellowship at the time of his death, which was acquired with his earnings, belongs to the corporation and not to his heirs. In this case one Augustin Wirth joined the Order of St. Benedict in 1852, taking the vow of poverty as required by the by-laws of the association; it was further provided by these by-laws, that in consideration of the taking the vow of poverty, the order assured the new member a decent support for his life-time, while he remained in full membership. Consequently the contract of membership in the order could not be attacked on the ground of inadequacy of consideration.

The vow of poverty, as taken by Wirth, required him to renounce his right to individual ownership of property; it further provided that all property then in the possession of the new member, Wirth, as well as property acquired during membership, should be conveyed to the order as soon as possible.

Wirth, while a resident of Minnesota, and while a full-fledged member of the order, died in 1901. At his death he left valuable assets, including royalties on a number of religious works, which he had written during the late years of his life. Of these, the administrator took entire charge. The Order of St. Benedict then brought suit against the administrator claiming an equity in all moneys in issue, and basing their claim on the express covenant of poverty as agreed to by the deceased.

Justice Willard, in ordering a decree for the plaintiffs and thus holding the vow of poverty not contrary to public policy,

said: "That the purposes of the order are not contrary to public policy cannot for a moment be doubted. To doubt upon that point would be to doubt the doctrines of the Christian religion and the teachings of the moralists of all ages."

In accord with this decision is that of the Circuit Court for the Western District of Pennsylvania in the case of *Schwartz v. Duss,* 93 Fed., 528. In that case, the Harmony Society of Pennsylvania, which society had been the defendant in several similar cases, was again involved. The bill was for a partition and was brought by the heirs of a former member of the order, the members of the society being joined as co-defendants. As in the case of the *Order of St. Benedict v. Steinhauser,* the members of the society relinquished their right to the individual ownership of property.

The court, in decreeing that the plaintiff had no cause of action, said: "In view of the decision of the Supreme Court of Pennsylvania in *Schriber v. Rapp,* 5 Watts, 351, and the decisions of the Supreme Court of the United States in *Goesele v. Bimeler, supra,* and *Barker v. Nachtrieb,* 19 How. (U. S.), 126, it is clear that the above recited articles of agreement are valid contracts and that thereunder, upon the death of a member of the society in full fellowship, no claim, enforceable against the society or its property, passes to his heirs or personal representatives."

The case of the *General German Aged People's Home of Baltimore v. Hammerbacher,* 64 Md., 595, although holding only as to property in possession of the defendant at the time of his admission to the society, extended the doctrine and allowed the plaintiffs to recover possession of property, the ownership of which the defendant had fraudulently concealed upon his admission.

Justice Stone in rendering his decision decreed that the vow of poverty was not contrary to public policy, and, further, that Zolles, the deceased, had perpetrated a fraud on the plaintiff and that the plaintiff was entitled to have the administrator of his estate ordered to convey the property to the plaintiff.

And this doctrine is supported even though the administrator claim the funds or property for the benefit of creditors. *Cowles v. Whitman,* 10 Conn., 21. The decision is upheld on the ground that a constructive trust has been created for the plaintiff.

Therefore, it may be said that the vow of poverty as taken by a member of a religious order, by which he relinquishes his right to individual ownership, is deemed by the courts to be but an exercise of that inherent right of freedom of alienation of property; it is not contrary to public policy; but is valid and is decreed to be in accord with all the strict principles of morality.

THE ADMISSIBILITY OF EVIDENCE SOLELY TO ASSIST THE JURY IN THE EXERCISE OF A DISCRETION CONFIDED TO IT.

In *People v. Luis,* 110 Pac. (Cal.), 580, the defendant, a Chinaman, was tried for the murder of a Chinese woman. The defense offered evidence, that in the Chinese mind, a Chinese woman amounted to very little and that the taking of the life of such a woman was not a very serious matter. The object of the evidence was to enable the jury, if they found the defendant guilty of murder in the first degree, to intelligently exercise the discretion confided to them by Sec. 190, *Penal Code,* which provides as follows: "Every person guilty of murder, in the first degree, shall suffer death, or confinement in the state prison for life, at the discretion of the jury trying the same," etc.

In holding the evidence inadmissible, the court said: "If we assume that a defendant in a murder case is entitled to introduce evidence not material or admissible on the question of his guilt, or the degree of his offense, solely for the purpose of assisting the jury in the exercise of a discretion confided to it, we are satisfied that the proposed evidence was not competent for that purpose. Whatever evidence may be so introduced, certainly evidence of the opinion of the murderer as to the value or importance of the life of the party murdered by him, can play no legitimate part in his favor."

One of the axioms on which our law of evidence rests is: All facts having a rational probative value are admissible, unless some specific rule forbids. *Wigmore, Evidence,* Sec. 10. We find no rule of evidence that precludes a defendant, in a murder case, from showing matters, not material or admissible on the question of his guilt or the degree of his offense, but merely to aid the jury in the exercise of a discretion confided to it.

A careful survey of the English cases, and of the reports of all the United States, shows no judicial decision that can rea-